

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS ANTONIO PRECIADO,

Petitioner,

No. CIV S-04-1021 WBS GGH P

vs.

DAVID RUNNELS, Warden, et al.,

Respondents.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's June 23, 2008, denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

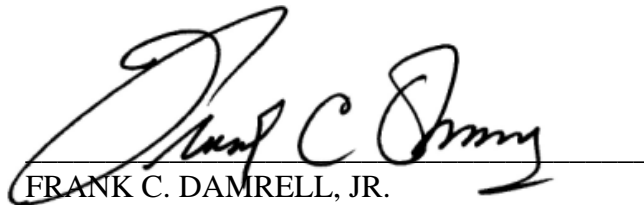
A certificate of appealability should be granted for any issue that petitioner can demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different court, or is “‘adequate to deserve encouragement to proceed further.’” Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 Petitioner has made a substantial showing of the denial of a constitutional right in
3 the following issues presented in the instant petition: 1) whether trial court denied petitioner his
4 federal constitutional right to due process of law and the right to confrontation by refusing to
5 order discovery of potential exculpatory evidence of malpractice that would prove to be
6 independent cause of the victim's death; 2) whether the court denied counsel his constitutional
7 right to cross-examine the treating physician; 3) the trial court denied petitioner his federal
8 constitutional right to due process and protection against self-incrimination by allowing the
9 prosecution to present petitioner's involuntary confession obtained unconstitutionally to the trial
10 jury.

11 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
12 issued in the present action.

13 DATED: July 29, 2008.

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16 FRANK C. DAMRELL, JR.
17 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the
26 standard for issuance of a certificate of appealability is the same as the standard that applied to
issuance of a certificate of probable cause. Jennings, at 1010.